IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2199 OF 2005

Jagdish M.Joshi. ... Petitioner

Versus.

1. The Sr.Inspector of Police,
Crime Branch, C.I.D. Flying Squad,
Pune.

2. Central Bureau of Investigation,
Special Crime Region III, New Delhi.

3. The Directorate of Enforcement,
Government of India,
Nariman Point, Mumbai.

4. The State of Maharashtra. ... Respondents.

Shri Vijay Tulpule i/by Shri Ganesh Gole for the Petitioner.

Shri K.V.Saste, A.P.P. for the Respondent Nos.1 & 4.

Shri Raja Thakare for the Respondent No.2.

Shri J.C.Satpute for the Respondent No.3.

CORAM : ABHAY S. OKA, J.

DATED : 14th October, 2005.

P.C.:

1. Heard the learned Counsel for the Petitioner and the learned Counsel appearing for the Respondents. The prayers made in this petition read thus:

(a) That this Hon'ble Court may be pleased to permit the Petitioner to travel abroad for a period of nine months continuously by directing Respondent No.1 to release his

Passport on an undertaking given by the Petitioner to attend Sessions Case No.10/2002 pending before the Hon'ble Sessions Court, Satara, on every date of his trial and pending commencement of the trial he shall attend the Sessions Court at Satara on every date/date of hearing and on depositing an enhanced cash security to the satisfaction of this Hon'ble Court and on such terms and conditions as this Hon'ble Court may deem fit and proper.

(b) That the Petitioner may kindly be permitted to go abroad on the undertaking that he shall give his place of residence, country of visits, contact telephone numbers to the Respondent Nos.2 and 3 and shall report to the authorities whenever his presence is required within a week's time notice given to him on his contact telephone number.

With a view to appreciate submissions made by the learned Counsel appearing for the respective parties, it will be necessary to refer to the facts of the case. By order dated 13th September 2002 passed by the learned Additional Sessions Judge, Satara, in Sessions Case No.10 of 2002, the Petitioner was ordered to be enlarged on bail. Condition No.4 incorporated in the said order

reads thus:

> "(4) He shall not leave India and he should surrender his Passport to the Investigating Officer.

2. An application was earlier made by the present Petitioner in this Court seeking permission to go abroad. The said application being Criminal Application No.3648 of 2005 was filed in the disposed of Criminal Writ Petition No.762 of 2003. By order dated 3rd August 2005 this Court permitted the Petitioner to withdraw the said application with liberty to file an appropriate application for the same relief before the trial Court. Accordingly an application was made by the petitioner before the trial Court which came to be rejected by Judgment and order dated 6th September 2005.

3. The learned Advocate for the Petitioner placed reliance on the orders dated 24th June 2003, 28th November, 2003 and 11th August 2004, passed by this Court under which the Petitioner was permitted to travel abroad. He submitted that the Petitioner has complied with the said orders and has come back to India. On an earlier occasion when this petition was argued, it was pointed out that if the permission to travel abroad was not granted in favour of the Petitioner, he will be deprived of his status as a Non Resident Indian under

section 6 of the Income Tax Act, 1961 as he is required to stay abroad for more than 182 days every financial year. In an affidavit of the Petitioner, which is tendered today, it is stated that as permission was not granted to go abroad, he has already lost his status as N.R.I. for the current financial year. Shri Tulpule submitted that on an earlier occasion his application was not opposed by the State. He pointed that Sessions Case pending against the Petitioner is not yet ready for hearing and even the charge is not framed as the applications for discharge are pending in the said case. He submitted that the Petitioner cannot be prevented from going abroad only on the ground that investigation under the Foreign Exchange Maintenance Act, 1999 is in progress. He submitted that even if the Petitioner is punished for violation of offence under the said Act, he can be sentenced only to pay fine. He submitted that so far as the enquiry at the instance of the C.B.I. is concerned, the person who is named as an Accused has been permitted to go abroad by the concerned Court. He has placed reliance on the affidavit filed today and pointed out that the business activities of the Petitioner will suffer if he is not allowed to go abroad. In the said affidavit it is stated that he may be permitted to travel for a period of at least two months to the countries where his business establishments are located. He has stated that he will come back to India and will appear before the

investigating agency and the Sessions Court at Satara with a short notice.

4. The learned A.P.P. has opposed the application by filing an affidavit-in-reply of one Anil Dattatryaya Patil, Deputy Superintendent of Police, Flying Squad, C.I.D. Pune. He submitted that if the Petitioner is permitted to go abroad, it will hamper the progress of the Sessions Case pending in the Sessions Court at Satara. He pointed that the Pune Municipal Corporation has conducted raid over the five distributors situated in Pune City who are selling Goa Gutka/Mava and have seized the products which were at that time banned by the State Government. It is stated in the affidavit that an enquiry is being made in respect of the offences under the provisions of the Prevention of Food Adulteration Act against the Petitioner and the other Accused and filing of the complaint against the Petitioner and the others will be considered after receipt of the Chemical Analyser's report. An affidavit is also filed by one Sanjay Tripathi, Assistant Director of Enforcement, on behalf of the Respondent No.3, wherein it is stated that the Applicant is required to be examined in respect of 1300 documents furnished to the Directorate. The learned Advocate appearing for the Respondent No.3 has produced for my perusal the statements recorded under section 164 of the Code of Criminal Procedure, 1973 and submitted that looking to

the seriousness of the investigation under the Foreign Exchange Management Act, 1999, the Petitioner cannot be permitted to go abroad. The learned Advocate appearing for the C.B.I. submitted that the investigation against the Petitioner is in progress under the provisions of the Maharashtra Control of Organised Crime Act, 1999. He stated that the order passed by the Special Court permitting the accused in the said case under the MCOC Act to go abroad has been challenged by filing appropriate proceedings. He, therefore, submitted that if the Petitioner is permitted to go abroad, it will hamper the ongoing investigation.

5. I have considered the submissions. At the outset it must be noted that condition No.4 incorporated in order dated 13th September 2002 completely prohibits the Petitioner from leaving India. The said order has not been challenged by the Petitioner. The said order does not provide that the Petitioner will be permitted to leave India after obtaining permission from the concerned Court. The condition imposed for grant of bail is very specific that he shall not leave India. The Petitioner has availed of the bail by accepting the said condition.

6. Reliance is placed on the orders passed by this Court which are referred to in the earlier part of the order. A perusal of the said orders shows that the said

orders were passed on the basis of the concession made by the learned Prosecutor appearing for the State. Moreover the CBI and the Directorate of Enforcement were not parties in the said proceedings. Therefore, the Petitioner cannot rely upon the said orders passed by this Court.

7. It is brought to my notice that the Sessions Case is pending in the Sessions Court at Satara. Roznama of the said case shows that on some dates fixed in the case, the Petitioner did not remain present. The Roznama shows that on 18th May 2005 and 13th June 2005 the Petitioner was absent. The investigation is in progress against the Petitioner under the Foreign Exchange Maintenance Act 1999. The statement of witnesses recorded under section 164 of the said Code shown to me indicate the seriousness of the allegations againt the Petitioner. After having perused the papers relating to the said investigations, it is obvious that if the Petitioner is permitted to go abroad, it will affect the investigation. Moreover it is pointed out that the investigation is in progress against the Petitioner for an for the offence under the Maharashtra Control of Organized Crime Act.

8. Considering all these factors, no case is made out for grant the relief sought for in the Petition. The Petition is rejected.

9. At this stage Shri Tulpule appearing for the Petitioner prays that direction may be given to the Sessions Court to hear the Sessions Case expeditiously. Liberty to the Petitioner to apply to the concerned Sessions Court for expediting the trial.

Judge.